



UNITED STATES PATENT AND TRADEMARK OFFICE

29 AUG 2003

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

R. Craig Tucker
Eli Lilly Company
Patent Division
P.O. Box 6288
Indianapolis, Indiana 46206-6288

In re Application of	:	
BRINER et al.	:	
Application No.: 09/890,311	:	DECISION ON PETITION
PCT No.: PCT/US00/01342	:	UNDER 37 CFR 1.181
Int. Filing Date: 19 January 2000	:	
Priority Date: 27 January 1999	:	
Attorney Docket No.: X-11594	:	
For: AMINOALKYLBENZOFURANS AS	:	
SEROTONIN (5-HT(2C)) AG ONISTS	:	

This is a decision on applicants' "Renewed Petition to Withdraw Holding of Abandonment under 37 CFR 1.181" filed in the Patent and Trademark Office (PTO) on 14 August 2003. No petition fee is due.

BACKGROUND

On 19 January 2000, applicants filed international application no. PCT/US00/01342 which claimed a priority date of 27 January 1999. A Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 27 July 2001.

On 26 July 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee; a copy of the international application; and a preliminary amendment.

On 10 September 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirement under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration executed by the inventor and the \$130.00 surcharge for filing after the thirty-month period was required.

On 15 November 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification of Missing Requirements mailed 10 September 2001 within the time period set therein.

On 02 December 2002, applicants filed an executed declaration and a petition under 37 CFR 1.137(a). Applicants stated in the petition, "[a]pplicants received a Notification of

Abandonment, stating that the cause for abandonment as a failure to respond to a Notification of Missing Requirements, purportedly mailed 10 September 2001. Applicants declare that no such Notice of Missing Requirements was received in Applicants' offices . .," therefore, petitioner's statements were treated as a petition to withdraw holding of abandonment under 37 CFR 1.181. The petition was dismissed in a Decision dated 10 April 2003.

On 14 August 2003, applicants filed the present Renewed Petition to Withdraw Holding of Abandonment under 37 CFR 1.181.

DISCUSSION

With regards to applicants' request that the holding of abandonment be withdrawn, a proper showing in order to establish that papers were not received as set forth in the Official Gazette at 1156 OG 53 must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement). The 10 April 2003 decision indicated that applicants satisfied item (1) above.

Concerning item (2) above, applicants have provided a statement attesting that a search of the file jacket and docket records indicates that the notification was not received.

As to Item (3), applicants have submitted a copy of the docket records for 10 November 2001, indicating all applications for which a response was due on said date. Therefore, since applicants have satisfied Items (1), (2), and (3) above, the request may be properly granted.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **GRANTED**. The holding of Abandonment is withdrawn.

The application has an international filing date of 19 January 2000 under 35 U.S.C. 363 and a 35 U.S.C. 371(c) date of **02 December 2002**.

This application is being returned to the United States/Designated Elected Office for processing in accordance with this decision.



Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel.: 703-308-6314
Fax: 703-308-6459